

By: Johnson of Dallas

H.B. No. 809

A BILL TO BE ENTITLED

AN ACT

1
2 relating to authorizing the possession, use, cultivation,
3 distribution, transportation, and delivery of medical cannabis for
4 medical use by patients with post-traumatic stress disorder and the
5 licensing of medical cannabis dispensing organizations;
6 authorizing fees.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Subtitle C, Title 6, Health and Safety Code, is
9 amended by adding Chapter 487A to read as follows:

10 CHAPTER 487A. USE OF CANNABIS FOR MEDICAL PURPOSES

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 487A.001. DEFINITIONS. In this chapter:

13 (1) "Department" means the Department of Public
14 Safety.

15 (2) "Director" means the public safety director of the
16 department.

17 (3) "Dispensing organization" means an organization
18 licensed by the department to cultivate, process, and dispense
19 medical cannabis to a patient for whom medical use is recommended
20 under Chapter 169A, Occupations Code.

21 (4) "Medical cannabis" and "medical use" have the
22 meanings assigned by Section 169A.001, Occupations Code.

23 SUBCHAPTER B. DUTIES OF DEPARTMENT

24 Sec. 487A.051. DUTIES OF DEPARTMENT. The department shall

1 administer this chapter.

2 Sec. 487A.052. RULES. (a) The director shall adopt any
3 rules necessary for the administration and enforcement of this
4 chapter.

5 (b) The director shall adopt rules imposing fees under this
6 chapter in amounts sufficient to cover the cost of administering
7 this chapter.

8 Sec. 487A.053. LICENSING OF DISPENSING ORGANIZATIONS AND
9 REGISTRATION OF CERTAIN ASSOCIATED INDIVIDUALS. (a) The
10 department shall:

11 (1) issue or renew a license under Subchapter C to
12 operate as a dispensing organization to each applicant who
13 satisfies the requirements established under this chapter for
14 licensure as a dispensing organization; and

15 (2) register directors, managers, and employees under
16 Subchapter D of each dispensing organization.

17 (b) Subject to Section 411.503, Government Code, the
18 department shall enforce compliance of license holders and
19 registrants and shall adopt procedures for suspending or revoking a
20 license or registration issued under this chapter and for renewing
21 a license or registration issued under this chapter.

22 Sec. 487A.054. MEDICAL USE REGISTRY. (a) The department
23 shall establish and maintain a secure online medical use registry
24 that contains:

25 (1) the name of each physician who registers as the
26 physician recommending medical use for a patient under Section
27 169A.003, Occupations Code, and the name and date of birth of the

1 patient; and

2 (2) the amount of medical cannabis dispensed to each
3 patient.

4 (b) The department shall ensure the registry:

5 (1) is designed to prevent more than one physician
6 from registering as the physician recommending medical use for a
7 single patient;

8 (2) is accessible to law enforcement agencies and
9 dispensing organizations for the purpose of verifying whether a
10 patient is one for whom medical use is recommended under Chapter
11 169A, Occupations Code; and

12 (3) allows a physician recommending medical use under
13 Chapter 169A, Occupations Code, to input safety and efficacy data
14 derived from the treatment of patients for whom medical use is
15 recommended.

16 SUBCHAPTER C. LICENSING TO OPERATE AS DISPENSING ORGANIZATION

17 Sec. 487A.101. LICENSE REQUIRED. A person may not operate
18 as a dispensing organization without a license issued by the
19 department under this subchapter.

20 Sec. 487A.102. ELIGIBILITY FOR LICENSE. An applicant for a
21 license to operate as a dispensing organization is eligible for the
22 license if:

23 (1) as determined by the department, the applicant
24 possesses:

25 (A) the technical and technological ability to
26 cultivate and produce medical cannabis;

27 (B) the ability to secure:

1 (i) the resources and personnel necessary
2 to operate as a dispensing organization; and

3 (ii) premises reasonably located to allow
4 patients listed on the medical use registry access to the
5 organization through existing infrastructure;

6 (C) the ability to maintain accountability for
7 the raw materials, the finished product, and any by-products used
8 or produced in the cultivation or production of medical cannabis to
9 prevent unlawful access to or unlawful diversion or possession of
10 those materials, products, or by-products; and

11 (D) the financial ability to maintain operations
12 for not less than two years from the date of application;

13 (2) each director, manager, or employee of the
14 applicant is registered under Subchapter D; and

15 (3) the applicant satisfies any additional criteria
16 determined by the director to be necessary to safely implement this
17 chapter.

18 Sec. 487A.103. APPLICATION. (a) A person may apply for an
19 initial or renewal license under this subchapter by submitting a
20 form prescribed by the department along with the application fee in
21 an amount set by the director.

22 (b) The application must include the name and address of the
23 applicant, the name and address of each of the applicant's
24 directors, managers, and employees, and any other information
25 considered necessary by the department to determine the applicant's
26 eligibility for the license.

27 Sec. 487A.104. ISSUANCE, RENEWAL, OR DENIAL OF LICENSE.

1 (a) The department shall issue or renew a license under this
2 subchapter only if:

3 (1) the department determines the applicant meets the
4 eligibility requirements described by Section 487A.102; and

5 (2) issuance or renewal of the license is necessary to
6 ensure reasonable statewide access to, and the availability of,
7 medical cannabis for patients registered in the medical use
8 registry for whom medical cannabis is recommended under Chapter
9 169A, Occupations Code.

10 (b) If the department denies the issuance or renewal of a
11 license under Subsection (a), the applicant is entitled to a
12 hearing. Chapter 2001, Government Code, applies to a proceeding
13 under this section.

14 (c) A license issued or renewed under this section expires
15 as determined by the department in accordance with Section 411.511,
16 Government Code.

17 Sec. 487A.105. CRIMINAL HISTORY BACKGROUND CHECK. (a) An
18 applicant for the issuance or renewal of a license under this
19 subchapter shall provide the department with the applicant's name
20 and the name of each of the applicant's directors, managers, and
21 employees.

22 (b) Before a dispensing organization under this subchapter
23 hires a manager or employee for the organization, the license
24 holder must provide the department with the name of the prospective
25 manager or employee. The license holder may not transfer the
26 license to another person before that prospective applicant and the
27 applicant's directors, managers, and employees pass a criminal

1 history background check and are registered as required by
2 Subchapter D.

3 (c) The department shall conduct a criminal history
4 background check on each individual whose name is provided to the
5 department under Subsection (a) or (b). The director by rule shall:

6 (1) require each individual whose name is provided to
7 the department under Subsection (a) or (b) to submit a complete set
8 of fingerprints to the department on a form prescribed by the
9 department for purposes of a criminal history background check
10 under this section; and

11 (2) establish criteria for determining whether an
12 individual passes the criminal history background check for the
13 purposes of this section.

14 (d) After conducting a criminal history background check
15 under this section, the department shall notify the relevant
16 applicant or organization and the individual who is the subject of
17 the criminal history background check as to whether the individual
18 passed the criminal history background check.

19 Sec. 487A.106. DUTY TO MAINTAIN ELIGIBILITY. Each license
20 holder under this subchapter must maintain compliance at all times
21 with the eligibility requirements described by Section 487A.102.

22 Sec. 487A.107. DUTIES RELATING TO DISPENSING MEDICAL
23 CANNABIS. (a) Before dispensing medical cannabis to a person for
24 whom medical use is recommended under Chapter 169A, Occupations
25 Code, the dispensing organization must verify that the person is
26 listed as a patient in the medical use registry.

27 (b) After dispensing medical cannabis to a patient for whom

1 medical use is recommended under Chapter 169A, Occupations Code,
2 the dispensing organization shall record in the medical use
3 registry the form and quantity of the medical cannabis dispensed
4 and the date and time of dispensation.

5 Sec. 487A.108. LICENSE SUSPENSION OR REVOCATION. (a) The
6 department may at any time suspend or revoke a license issued under
7 this subchapter if the department determines that the license
8 holder has not maintained the eligibility requirements described by
9 Section 487A.102 or has failed to comply with a duty imposed under
10 this chapter.

11 (b) The director shall give written notice to the license
12 holder of a license suspension or revocation under this section and
13 the grounds for the suspension or revocation. The notice must be
14 sent by certified mail, return receipt requested.

15 (c) After suspending or revoking a license issued under this
16 subchapter, the director may seize or place under seal all medical
17 cannabis and drug paraphernalia owned or possessed by the
18 dispensing organization. If the director orders the revocation of
19 the license, a disposition may not be made of the seized or sealed
20 medical cannabis or drug paraphernalia until the time for
21 administrative appeal of the order has elapsed or until all appeals
22 have been concluded. When a revocation order becomes final, all
23 medical cannabis and drug paraphernalia may be forfeited to the
24 state as provided under Subchapter E, Chapter 481.

25 (d) Chapter 2001, Government Code, applies to a proceeding
26 under this section.

27 SUBCHAPTER D. REGISTRATION OF CERTAIN INDIVIDUALS

1 Sec. 487A.151. REGISTRATION REQUIRED. (a) An individual
2 who is a director, manager, or employee of a dispensing
3 organization must apply for and obtain a registration under this
4 section.

5 (b) An applicant for a registration under this section must:

6 (1) be at least 18 years of age;

7 (2) submit a complete set of fingerprints to the
8 department in the manner required by department rule; and

9 (3) pass a fingerprint-based criminal history
10 background check as required by Section 487A.105.

11 (c) A registration expires on the second anniversary of the
12 date of the registration's issuance, unless suspended or revoked
13 under rules adopted under this chapter.

14 SUBCHAPTER E. DUTIES OF COUNTIES AND MUNICIPALITIES

15 Sec. 487A.201. COUNTIES AND MUNICIPALITIES MAY NOT PROHIBIT
16 MEDICAL CANNABIS. A municipality, county, or other political
17 subdivision may not enact, adopt, or enforce a rule, ordinance,
18 order, resolution, or other regulation that prohibits the
19 cultivation, production, dispensing, or possession of medical
20 cannabis, as authorized by this chapter.

21 SECTION 2. Subtitle B, Title 3, Occupations Code, is
22 amended by adding Chapter 169A to read as follows:

23 CHAPTER 169A. AUTHORITY TO RECOMMEND MEDICAL CANNABIS TO PATIENTS
24 WITH POST-TRAUMATIC STRESS DISORDER

25 Sec. 169A.001. DEFINITIONS. In this chapter:

26 (1) "Department" means the Department of Public
27 Safety.

1 (2) "Medical cannabis" means the plant Cannabis sativa
2 L., and any part of that plant or any compound, manufacture, salt,
3 derivative, mixture, preparation, resin, or oil of that plant.

4 (3) "Medical use" means the ingestion by a means of
5 administration other than by smoking of a recommended amount of
6 medical cannabis by a person for whom medical use is recommended
7 under this chapter.

8 (4) "Smoking" means burning or igniting a substance
9 and inhaling the smoke.

10 Sec. 169A.002. RECOMMENDATION OF MEDICAL USE. (a) A
11 physician may recommend medical use in accordance with this chapter
12 for a patient who is 18 years of age or older and has post-traumatic
13 stress disorder.

14 (b) A physician who recommends medical use for a patient
15 must:

16 (1) comply with the registration requirements of
17 Section 169A.003; and

18 (2) certify to the department that:
19 (A) the patient has post-traumatic stress
20 disorder; and

21 (B) the physician has determined that the risk of
22 medical use by the patient is reasonable in light of the potential
23 benefit for the patient.

24 Sec. 169A.003. RECOMMENDING PHYSICIAN REGISTRATION. (a)
25 Before a physician may recommend medical use for a patient under
26 this chapter, the physician must register as the recommending
27 physician for that patient in the medical use registry maintained

1 by the department under Section 487A.054, Health and Safety Code.

2 The physician's registration must indicate:

3 (1) the physician's name; and

4 (2) the patient's name and date of birth.

5 (b) The department may not publish the name of a physician
6 registered under this section unless permission is expressly
7 granted by the physician.

8 Sec. 169A.004. PATIENT TREATMENT PLAN. A physician who
9 recommends medical use for a patient under this chapter must
10 maintain a patient treatment plan that indicates:

11 (1) a plan for monitoring the patient's symptoms; and

12 (2) a plan for monitoring indicators of tolerance or
13 reaction to medical cannabis.

14 SECTION 3. Section [122.103\(c\)](#), Agriculture Code, is amended
15 to read as follows:

16 (c) A qualified applicant who along with the application
17 submits proof to the department that the applicant holds a license
18 under Chapter [487](#) or [487A](#), Health and Safety Code, is not required
19 to pay an application fee, and the department shall issue the
20 license to the applicant within the time prescribed by Subsection
21 (b).

22 SECTION 4. Section [411.0891\(a\)](#), Government Code, is amended
23 to read as follows:

24 (a) Subject to Section [411.087](#), the department is
25 authorized to obtain and use criminal history record information
26 maintained by the Federal Bureau of Investigation or the department
27 that relates to a person who:

1 (1) is an applicant for or holds a registration issued
2 by the director under Subchapter C, Chapter 481, Health and Safety
3 Code, that authorizes the person to manufacture, distribute,
4 analyze, or conduct research with a controlled substance;

5 (2) is an applicant for or holds a registration issued
6 by the department under Chapter 487 or 487A, Health and Safety Code,
7 to be a director, manager, or employee of a dispensing
8 organization, as defined by Section 487.001 or 487A.001, Health and
9 Safety Code;

10 (3) is an applicant for or holds an authorization
11 issued by the department under Section 521.2476, Transportation
12 Code, to do business in this state as a vendor of ignition interlock
13 devices;

14 (4) is an applicant for or holds certification by the
15 department as an inspection station or an inspector under
16 Subchapter G, Chapter 548, Transportation Code, holds an inspection
17 station or inspector certificate issued under that subchapter, or
18 is the owner of an inspection station operating under that chapter;
19 or

20 (5) is an applicant for or holds a certificate of
21 registration issued by the department under Chapter 1956,
22 Occupations Code, to act as a metal recycling entity.

23 SECTION 5. Section 411.502, Government Code, is amended to
24 read as follows:

25 Sec. 411.502. APPLICABILITY. This subchapter applies to a
26 program, and persons regulated under the program, administered by
27 the department under the following laws, including rules adopted

1 under those laws:

- 2 (1) Section 411.0625;
- 3 (2) Chapter 487, Health and Safety Code;
- 4 (3) Chapter 487A, Health and Safety Code;
- 5 (4) Chapter 1702, Occupations Code;
- 6 (5) [~~4~~] Chapter 1956, Occupations Code;
- 7 (6) [~~5~~] Section 521.2476, Transportation Code; and
- 8 (7) [~~6~~] Subchapter G, Chapter 548, Transportation
9 Code.

10 SECTION 6. Section 481.062(a), Health and Safety Code, is
11 amended to read as follows:

12 (a) The following persons may possess a controlled
13 substance under this chapter without registering with the Federal
14 Drug Enforcement Administration:

15 (1) an agent or employee of a manufacturer,
16 distributor, analyzer, or dispenser of the controlled substance who
17 is registered with the Federal Drug Enforcement Administration and
18 acting in the usual course of business or employment;

19 (2) a common or contract carrier, a warehouseman, or
20 an employee of a carrier or warehouseman whose possession of the
21 controlled substance is in the usual course of business or
22 employment;

23 (3) an ultimate user or a person in possession of the
24 controlled substance under a lawful order of a practitioner or in
25 lawful possession of the controlled substance if it is listed in
26 Schedule V;

27 (4) an officer or employee of this state, another

1 state, a political subdivision of this state or another state, or
2 the United States who is lawfully engaged in the enforcement of a
3 law relating to a controlled substance or drug or to a customs law
4 and authorized to possess the controlled substance in the discharge
5 of the person's official duties;

6 (5) if the substance is tetrahydrocannabinol or one of
7 its derivatives:

8 (A) a Department of State Health Services
9 official, a medical school researcher, or a research program
10 participant possessing the substance as authorized under
11 Subchapter G; or

12 (B) a practitioner or an ultimate user possessing
13 the substance as a participant in a federally approved therapeutic
14 research program that the commissioner has reviewed and found, in
15 writing, to contain a medically responsible research protocol; ~~or~~

16 (6) a dispensing organization licensed under Chapter
17 487 that possesses low-THC cannabis; or

18 (7) a dispensing organization licensed under Chapter
19 487A that possesses medical cannabis.

20 SECTION 7. Sections 481.111(e) and (f), Health and Safety
21 Code, are amended to read as follows:

22 (e) Sections 481.120, 481.121, 481.122, and 481.125 do not
23 apply to a person who engages in the acquisition, possession,
24 production, cultivation, delivery, or disposal of a raw material
25 used in or by-product created by the production or cultivation of
26 low-THC cannabis or medical cannabis if the person:

27 (1) for an offense involving possession only of

1 marihuana or drug paraphernalia, is a patient for whom low-THC
2 cannabis is prescribed under Chapter 169, Occupations Code, or the
3 patient's legal guardian, and the person possesses low-THC cannabis
4 obtained under a valid prescription from a dispensing organization;
5 ~~[or]~~

6 (2) is a director, manager, or employee of a low-THC
7 cannabis dispensing organization and the person, solely in
8 performing the person's regular duties at the organization,
9 acquires, possesses, produces, cultivates, dispenses, or disposes
10 of:

11 (A) in reasonable quantities, any low-THC
12 cannabis or raw materials used in or by-products created by the
13 production or cultivation of low-THC cannabis; or

14 (B) any drug paraphernalia used in the
15 acquisition, possession, production, cultivation, delivery, or
16 disposal of low-THC cannabis;

17 (3) for an offense involving possession only of
18 marihuana or drug paraphernalia, is a patient for whom medical use
19 is recommended under Chapter 169A, Occupations Code; or

20 (4) is a director, manager, or employee of a medical
21 cannabis dispensing organization and the person, solely in
22 performing the person's regular duties at the organization,
23 acquires, possesses, produces, cultivates, dispenses, or disposes
24 of:

25 (A) in reasonable quantities, any medical
26 cannabis or raw materials used in or by-products created by the
27 production or cultivation of medical cannabis; or

1 (B) any drug paraphernalia used in the
2 acquisition, possession, production, cultivation, delivery, or
3 disposal of medical cannabis.

4 (f) For purposes of Subsection (e):

5 (1) [~~"Dispensing organization" has the meaning~~
6 ~~assigned by Section 487.001.~~

7 [~~(2)~~] "Low-THC cannabis" has the meaning assigned by
8 Section 169.001, Occupations Code.

9 (2) "Low-THC cannabis dispensing organization" means
10 a dispensing organization as defined by Section 487.001.

11 (3) "Medical cannabis" and "medical use" have the
12 meanings assigned by Section 169A.001, Occupations Code.

13 (4) "Medical cannabis dispensing organization" means
14 a dispensing organization as defined by Section 487A.001.

15 SECTION 8. Section 551.004, Occupations Code, is amended by
16 amending Subsection (a) and adding Subsection (a-1) to read as
17 follows:

18 (a) This subtitle does not apply to:

19 (1) a practitioner licensed by the appropriate state
20 board who supplies a patient of the practitioner with a drug in a
21 manner authorized by state or federal law and who does not operate a
22 pharmacy for the retailing of prescription drugs;

23 (2) a member of the faculty of a college of pharmacy
24 recognized by the board who is a pharmacist and who performs the
25 pharmacist's services only for the benefit of the college;

26 (3) a person who procures prescription drugs for
27 lawful research, teaching, or testing and not for resale;

1 (4) a home and community support services agency that
2 possesses a dangerous drug as authorized by Section 142.0061,
3 142.0062, or 142.0063, Health and Safety Code; ~~[or]~~

4 (5) a low-THC cannabis dispensing organization~~[, as~~
5 ~~defined by Section 487.001, Health and Safety Code,~~] that
6 cultivates, processes, and dispenses low-THC cannabis, as
7 authorized by a license issued under Subchapter C, Chapter 487,
8 Health and Safety Code, to a patient listed in the
9 compassionate-use registry established under that chapter; or

10 (6) a medical cannabis dispensing organization that
11 cultivates, processes, and dispenses medical cannabis, as
12 authorized by a license issued under Subchapter C, Chapter 487A,
13 Health and Safety Code, to a patient listed in the medical use
14 registry established under that chapter.

15 (a-1) For purposes of Subsections (a)(5) and (6):

16 (1) "Low-THC cannabis dispensing organization" means
17 a dispensing organization as defined by Section 487.001, Health and
18 Safety Code.

19 (2) "Medical cannabis dispensing organization" means
20 a dispensing organization as defined by Section 487A.001, Health
21 and Safety Code.

22 SECTION 9. Not later than January 1, 2022, the public safety
23 director of the Department of Public Safety shall adopt rules as
24 required to implement, administer, and enforce Chapter 487A, Health
25 and Safety Code, as added by this Act, including rules to establish
26 the medical use registry required by that chapter.

27 SECTION 10. This Act takes effect immediately if it

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1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2021.